Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73,861

EAST CARROLL PARISH SCHOOL BOARD
AND EAST CARROLL PARISH POLICE JURY,

Petitioners,

V.

STEWART MARSHALL,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent prays that this Court deny the petition for writ of certiorari sought by petitioners to review the decision of the United States Court of Appeals for the Fifth Circuit, en banc, on rehearing, rendered on September 12, 1973, reversing its previous decision entered on August 3, 1972.

QUESTION PRESENTED

Whether under the totality of circumstances of this case at-large elections in East Carroll Parish operate to minimize or cancel out the voting strength of racial or political elements of the voting population.

STATEMENT OF THE CASE

Prior to 1968, members of the East Carroll Parish Police Jury and School Board were elected by the electors of the wards of the parish. Due to vastly increased black voter registration[1] as a result of federal registration in the parish under the Voting Rights Act of 1965, blacks gained a voting majority in several wards, and for the first time since Reconstruction, blacks were elected to the Police Jury and School Board. In 1968 a change was effected from the ward system to at-large elections, resulting in a white voting majority controlling election of all members of both bodies.

The original 1968 Complaint was a sweetheart lawsuit filed by a white plaintiff and resulted in an order entered upon stipulation which declared the bodies malapportioned, and

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[1] As of 1961, no black person had been registered to vote in East Carroll Parish since 1922. By 1971, there were approximately 2,899 black voters, and 3,342 white voters. See United States v. Manning, 205 F. Supp. 172 (1962).

an order entered upon consent of all parties instituting the at-large scheme of elections.

By letter of August 7, 1970, the Attorney General of the United States notified the parish of his opposition under Section 5 of the Voting Rights Act of 1965 to implementation of the at-large elections for the August 15, 1970 School Board primary.[2] Nevertheless, the petitioners conducted these elections pursuant to the at-large plan.

In response to the District Court's letter of February 17, 1971, directing petitioners to submit a plan in accordance with 1970 Census, defendants submitted the at-large plan. At this point, your respondent, Stewart Marshall, a black citizen of East Carroll Parish, moved to intervene and was permitted to do so by order of May 10, 1971. Your respondent's Complaint in Intervention charged that the at-large plan was an inappropriate equitable remedy and violative of the Fourteenth and Fifteenth Amendments to the United States Constitution, and the Voting Rights Act of 1965.

A full hearing was conducted on July 29, 1971, at which your respondent introduced extensive evidence of the long and continuing discrimination against and disenfranchisement

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[2] The Attorney General also indicated his disapproval of the at-large scheme in East Carroll Parish by letter of September 10, 1969. This letter is reprinted in the opinion in LeBlanc v. Rapides Parish Police Jury, 315 F. Supp. 783, 788-9 (1970).

of blacks in East Carroll Parish, the context in which the change to at-large voting was effected, of the racially discriminatory intention and effect of the at-large plan, and generally those elements of proof outlined as necessary to meet plaintiff's burden under such decisions as Whitcomb v. Chavis, 403 U.S. 124 (1971) and White v. Regester, _____U.S. _____, 37 L.Ed.2d 314 (1973).

The District Court initially again approved the at-large plan on grounds that the plan had a zero deviation from the one-man, one-vote norm, and because a majority of the population of the parish is black. However, on March 27, 1972, after your respondent had noticed appeal to the Fifth Circuit, the District Court withdrew its approval of the at-large scheme and ordered a return to a division of the parish into election districts, finding, inter alia.

> 3. That prior to at-large elections, the single-member ward system of elections has produced two Black members of the Police Jury and one Black member of the School Board.
>
> 4. That although at-large elections in East Carroll Parish may not entirely preclude the possibility of a Black being elected, it operates to the disadvantage of Blacks, and places a serious and unnecessary handicap to effective participation of the newly enfranchised Black citizens of East Carroll Parish.
>
> 5. The fact that East Carroll Parish did not attempt to change to at-large elections until

> blacks were registered and had been elected from certain wards, supports the court's finding that at-large elections in East Carroll Parish are racially discriminatory in purpose or effect.
>
> 6. Although many parishes in Louisiana have attempted to change to at-large elections after Blacks were registered in significant numbers due to the Voting Rights Act of 1965, none of these attempts have passed federal scrutiny. In all instances known to this Court, the at-large plans have been struck down either by the Attorney General of the United States acting pursuant to Section 5 or by the courts.
>
> * * *
>
> 8. Given the long history of disenfranchisement of Blacks in East Carroll Parish, the timing of the at-large plan, and the serious obstacles it places to the election of Blacks in East Carroll Parish, the Court finds that the at-large plan is violative of the Fifteenth Amendment to the United States Constitution.

On appeal, however, the Fifth Circuit panel found the District Court to be without jurisdiction to enter its March 27, 1972 order finding the at-large elections to be racially discriminatory. The panel further affirmed (with a dissent) the District Court's August 2, 1971 judgment. The United States Court of Appeals for the Fifth Circuit by order of November 17, 1972 granted respondent Marshall's Motion for Rehearing en banc,

and on September 12, 1973 entered an opinion and order finding that at-large elections in East Carroll Parish were racially discriminatory. The en banc Court found specifically that your respondent as plaintiff below had met the burden of proof under Whitcomb, supra, White, supra, and related decisions. It is this en banc decision which petitioners seek to have this Court review.

REASONS FOR DENYING THE WRIT

I. The Decision Below is Consistent with and even Mandated by this Court's Decision in White, supra, and after this Court's Decision in White, supra, There is No Question Remaining in the Present Case of a Magnitude to Warrant this Court Granting Review by Certiorari.

The Fifth Circuit en banc decision merely takes the clear ruling of this Court in White, supra, Whitcomb, supra, and related decisions, and applies those guidelines to the circumstances of the present case. Petitioners' reliance upon the findings of the District Court is misplaced in view of that Court's later withdrawal of its findings and issuance of new findings supporting the proposition that at-large election in East Carroll Parish operated to minimize and cancel out the vote of black citizens of that parish.

Petitioners would have this Court believe that the en banc decision below establishes a per se rule of unconstitutionality of at-large elections. This is simply not true. The en banc decision clearly indicates that it is not developing a per se rule (Slip opinion, p. 11), but rather is judging the merits of this case on its own bottom and under the particular circumstances present in East Carroll Parish.

If anything, the en banc decision counters a per se rule by the District Court and a majority of the Fifth Circuit panel, which had held that "an at-large scheme cannot work a dilution of black voting strength where blacks, though constituting a minority of registered voters, comprise a majority of the total population of the parish" (Slip opinion, p. 2, en banc decision). A per se rule that where blacks constitute a majority of the population, dilution of their vote cannot occur would result in blacks being disenfranchised in those parishes and counties in the South where they are most heavily concentrated. Data before the Court below indicated that there are fourteen counties in Mississippi and eight parishes in Louisiana in which blacks comprise a majority of the population but that in none of those parishes or counties do blacks comprise a majority of registered voters. To allow a per se rule such as that suggested by the District Court or by the panel of the Fifth Circuit (that where blacks constitute a majority of the population, there can be no dilution of their vote), would be an open license for those bent upon disenfranchising blacks to establish at-large elections in those counties and parishes, and thereby ensure continued white supremacy in the elections for the governing bodies of those parishes and counties. Those bent upon disenfranchisement of blacks are aware of the obvious political reality that registered voters rather than population represents political power. The Fifth Circuit en banc decision also recognizes this political reality, and provides a remedy to this disenfranchisement which is equal to it in sophistication.

Accordingly, this case is consistent with prior decisions of this Court, and does

not present a question of a magnitude to justify this Court's exercise of its supervisory jurisdiction.

II. The Court Below Properly Determined that the District Court had Applied an Improper Legal Standard in Evaluating Dilution, and that the District Court was Clearly Erroneous in Finding that At-large Election did not Dilute the Voting Strength of Black Voters in the Parish.

East Carroll Parish in its petition asserts, and would have this Court believe, that the en banc decision below "did not find the District Court's finding to be 'clearly erroneous' or 'manifest error' as required under Rule 52 of the Federal Rules of Civil Procedure" (Petition, p. 16). This assertion is entirely false and cannot be justified by any possible reading or interpretation of the en banc decision. The en banc ruling stated clearly that:

> Marshall urged several grounds for reversal on appeal: first that the district court was without power to order at-large elections because under Section 5 of the Voting Rights Act of 1965, the Attorney General of the United States had tendered an objection to the Louisiana Statutes which prescribed at-large elections for police juries and school boards; second, that the district court applied an improper legal standard in evaluating dilution; and third, that the district court was clearly erroneous in finding that at-large elections do not dilute the voting strength of black voters in the parish. All three

> contentions were rejected by the panel.
>
> On rehearing, Marshall challenged the panel's disposition on all three grounds. Since we find his last two challenges meritorious, we need not consider his first contention concerning Section 5 of the Voting Rights Act of 1965.
>
> (Emphasis supplied, notes omitted, Slip opinion, p. 5,6)

Further, it should be noted that defendants' heavy reliance upon the District Court's finding of fact in its first ruling is misplaced in view of the fact that the District Court attempted to withdraw that decision and issued a second findings of fact which did conclude that at-large elections in East Carroll Parish amounted to a constitutionally impermissible dilution of the black vote.

CONCLUSION

Since the decision of the Fifth Circuit en banc below is entirely consistent with prior decisions of this Court, and the case presents no question of a magnitude to justify the issuance of a writ of certiorari, respondent respectfully urges that this Court expeditiously deny the petition for writ of certiorari, so that your respondent may proceed to move in the District Court for the institution of a single-member district plan of apportionment and bring this extended litigation to its long overdue conclusion.

Respectfully submitted,

STANLEY A. HALPIN, JR.
Counsel for Respondent

CERTIFICATE

I, Stanley A. Halpin, Jr., Attorney for Respondent and a member of the Bar of the United States Supreme Court, do hereby certify that on this 22nd day of February, 1974, I served copies of the foregoing Response to Petition for Writ of Certiorari on the attorneys of record for petitioners herein, Mr. John F. Ward, Jr., and Mr. Charles R. Bracken, by mailing three copies of same, postage prepaid, to them at their offices at 770 North Street, Baton Rouge, Louisiana, and Varco Building, 405 Morgan Street, Lake Providence, Louisiana, respectively.

STANLEY A. HALPIN, JR.
Counsel for Respondent